

THE MARK O. HATFIELD

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## An Announcement from the Judges

The judges in this court are becoming increasingly concerned about the excessive cost of litigation, due in large part to the extensive discovery engaged in by both plaintiffs and defendants. Therefore, all parties are advised that:

1. Pursuant to FRCP 30(a)(2)(A), no more than 10 depositions may be taken without leave of court or written stipulation of the parties. The judges of this court strictly enforce this rule.

2. Pursuant to FRCP 30(d)(2), the court by order or local rule may limit the length of a deposition. The judges of this court believe that depositions of key witnesses, including the plaintiff, normally should not take more than one day each. The deposition questions should be targeted at the allegations of liability and damages, with background information (education, litigation history, employment history, other witnesses, economic damages, etc.) obtained through interrogatories and requests for

production of documents. **The judges are not only favorably inclined to grant motions to limit the length of depositions, but also are disinclined to award a prevailing party the cost of more than one day of a deposition, except for good cause shown.**

3. Pursuant to FRCP 30(d)(1), counsel's objections during depositions must be concise, non-argumentative, and non-suggestive and counsel may instruct a witness not to answer a question only to preserve a privilege, enforce the court's order, or to make a motion to terminate the deposition. The judges of this court strictly enforce this rule, will not tolerate extended objections or colloquy between counsel, and generally are available to rule on objections made during depositions.

## Environment

In an action brought by the United States to permanently enjoin the clearcut harvest of privately owned forest land in Lane County, known as the Good

Hominy Unit, Chief Judge Michael Hogan recently denied the United States' motion for permanent injunction. The United States alleged that the harvest would amount to a "take" of a pair of owls known as the "Chickahominy Pair." Chief Judge Hogan previously issued a temporary injunction enjoining the harvest for one year in order to maintain the status quo while telemetry monitoring was performed to determine the owl pair's actual use. Following the completion of the telemetry monitoring and a two-day hearing wherein evidence was presented, the court determined that although the owls are actually using the Good Hominy Unit, primarily for foraging by the male owl, the United States had failed to satisfy its burden of establishing to a reasonable certainty that harvesting the Unit will result in significant habitat modification that would actually kill or injure the owls by significantly impairing the owls' essential behavioral patterns, including breeding, feeding, or sheltering. The evidence indicating that the owls also heavily used

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other old and young timber areas, outside the Unit, for foraging and other activities, and that the owls maintain relatively high reproductive rates persuaded the court that harvesting the Unit will not harm the owl pair. United States v. West Coast Forest, et al, 96-1575-HO (order filed March 13, 2000).

Plaintiff's Counsel:

Neil Evans (local)

Defense Counsel:

Scott Horngren

## Criminal Law

Judge Anna Brown denied a defense challenge to Portland Police Bureau General Order regarding vehicle inventory searches. The defendant sought to suppress evidence seized from his vehicle during a traffic stop for driving while uninsured. The officer recovered evidence of forgery during an inventory search of the car prior to towing. Defendant claimed that the General Order was unconstitutional because it gave the police unbridled discretion relative to whether a driver could remove personal items prior to the search.

Judge Brown held that the General Order only gives police officers discretion to permit car owners to retrieve personal items prior to the vehicle being towed; it does not give the officer any

discretion to permit a driver to retrieve personal items prior to an inventory search. The court noted that Oregon statutes require that the vehicles of drivers cited for being uninsured be impounded and searched. United States v. Martin, CR 99-398-BR (Opinion, Feb., 2000).

AUSA: Stephen Peifer

Defense: Ellen Pitcher

## First Amendment

Chief Judge Hogan abstained from deciding several First Amendment claims, and dismissed other First Amendment challenges to several Oregon statutes stating various petitioning requirements.

Chief Judge Hogan abstained from challenges to Measure 62, a measure dealing with the contribution and expenditure disclosures required in attempting to place an initiative on an Oregon ballot, because an action challenging the validity of the measure is currently pending in the state court of appeals. Because a resolution of the pending state court action could make a federal ruling on many of the issues presented in plaintiffs' complaint unnecessary, Chief Judge Hogan stayed the claims challenging Measure 62.

The remaining First Amendment challenges were dismissed because First

Amendment challenges involve fundamental rights, but free speech challenges to regulations that do not substantially burden speech are subject to lesser scrutiny. In such situations, the state must only offer an important state interest to justify a reasonable regulation. Because each challenged statute is reasonable, and is justified by the state's important interests, the court granted summary judgment as to these claims. American Constitutional Law Foundation, et al. v. Keisling, CV 99-6087-HO, (Opinion March 9, 2000).

Plaintiffs' Counsel:

Linda Williams (Local)

Defense Counsel:

Stephen Bushong

## Immigration

Judge Janice Stewart set aside a deportation order and directed that proceedings be reopened so that plaintiff could apply for discretionary relief under the "forgiveness" provisions of §212. The court held that the provision of the AEDPA mandating deportation for those convicted of drug offenses should not be applied retroactively to cases pending at the time of the statute's enactment. Burt v. Reno, CV 99-1621-ST (Opinion, Feb. 24, 2000).

Plaintiff's Counsel: Jeff Noles

Defense Counsel: Craig Casey